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No. 84-525

In the Supreme Court of the United States

OCTOBER TERM, 1984

BAYLOR UNIVERSITY MEDICAL CENTER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner operates a "program or activity receiving Federal financial assistance" under Section 504 of the Rehabilitation Act of 1973.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A22) is reported at 736 F.2d 1039. The opinion of the district court (Pet. App. B1-B9) is reported at 564 F. Supp. 1495.

JURISDICTION

The judgment of the court of appeals was entered on July 19, 1984, and the petition for a writ of certiorari was filed on October 16, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The government brought this action in the United States District Court for the Northern District of Texas to enforce Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and regulations promulgated thereunder by the Department of Health and Human Services (HHS or the Department).

1. Following the Department's receipt of a complaint alleging that petitioner, a medical institution, had refused to allow a hearing-impaired patient access to an interpreter, it initiated an investigation into whether petitioner had violated Section 504, which prohibits discrimination on the basis of handicap in "any program or activity receiving Federal financial assistance." Petitioner refused to allow HHS access to its records or facilities, claiming that it does not operate such a program. The government filed suit to obtain an order requiring petitioner to comply with the Department's investigatory requests, contending that petitioner's receipt of federal Medicare and Medicaid funds brings it within the coverage of Section 504.[1] Pet. App. A2-A3.

2. On cross-motions for summary judgment,[2] the district court determined that Medicare and Medicaid do constitute federal financial assistance and that petitioner's inpatient and emergency room services were programs receiving that assistance (Pet. App. B1-B9). The court ordered that future federal financial assistance be withheld for so long as petitioner continued to deny HHS access to its records and facilities (*id.* at B10). This order was stayed by the court of appeals pending appeal (*id.* at C1-C4).

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[1]HHS regulations provide that Medicare and Medicaid constitute federal financial assistance with respect to participating hospitals for purposes of Section 504 and similar statutes. See 45 C.F.R. Pt. 80 App. A, para. 121; *id.* Pt. 84 App. A, Subpt. A. Under Medicare Part A, the government pays participating hospitals for certain treatment of covered persons (42 U.S.C. 1395c, 1395d, 1395cc). The program is funded by payroll deductions (42 U.S.C. 1395i). Medicaid provides federal funds to state governments, which in turn pay for medical services to covered persons pursuant to a federally approved plan (42 U.S.C. 1396).

[2]Petitioner's records showed that its inpatient and emergency room services received over $29 million in Medicare Part A funds alone during the year ending June 30, 1980, and petitioner stipulated to its continuing receipt of Medicare and Medicaid funds (Pet. App. A3 n.2).

3. The court of appeals affirmed on the merits, but modified the district court's order (Pet. App. A1-A22).[3] The court relied on three separate sources in reaching its determination that hospital inpatient and emergency room services receive federal financial assistance within the meaning of Section 504 by virtue of their receipt of federal Medicare and Medicaid funds: the legislative history of the statutes prohibiting discrimination in federally funded programs, the case law interpreting these statutes, and the regulations adopted pursuant to them (Pet. App. A5). The court concluded, in light of these sources, that exclusion of hospitals that participate in Medicare and Medicaid from the coverage of Section 504 was impossible "without frustrating Congress' clear and consistent purpose to protect handicapped persons and members of minority groups from discrimination in programs receiving federal assistance" (Pet. App. A5).

The court noted first Congress's concern in Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, with discrimination based on race in the provision of health services (Pet. App. A8). When Congress established Medicare and Medicaid one year later, several Senators stated that hospitals participating in the programs would be required to abide by the nondiscrimination provisions of

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[3]The district court had suspended all future federal financial assistance to petitioner so long as it continued to deny HHS access to its facilities (Pet. App. B10). The court of appeals, having previously granted a stay (*id.* at C1-C4), held that the circumstances were not sufficiently egregious to warrant an immediate termination of benefits, and instead granted petitioner 30 days within which to comply with the Department's request; if it failed to do so within that time, federal assistance would be suspended (*id.* at A21-A22). Following the court of appeals' denial of petitioner's request for a stay, Justice White denied its application for stay on September 7, 1984. Petitioner has advised that it will comply with the Department's request "under protest," but that "it continues to deny coverage." Pet. 6. Because the investigation is still continuing, the case has not become moot.

Title VI; moreover, Medicaid expanded an existing program cited in the legislative history of Title VI as within its coverage (Pet. App. A9-A11). Because the prohibition of discrimination on the basis of handicap in Section 504 was intended by Congress to be "exactly equivalent to Title VI's prohibition of discrimination on the basis of race" (Pet. App. A11), the court found this legislative history highly relevant to the interpretation of Section 504. Finally, the court cited (Pet. App. A11-A12) a recent House Report,[4] which states that "it has always been clear [that] the Medicare and Medicaid funds constitute Federal financial assistance" within the meaning of the nondiscrimination statutes.

The court next relied on the substantial body of case law holding that receipt of Medicare and Medicaid funds triggers coverage of Section 504 and Title VI (Pet. App. A12).[5] It also drew support from this Court's analysis in *Grove City College* v. *Bell*, No. 82-792 (Feb. 28, 1984), in which the Court held that a college's receipt of Basic Educational Opportunity Grants constitutes federal financial assistance to its student loan and grant program for purposes of Section 901(a) of Title IX of the Education

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[4]H.R. Rep. 98-442, 98th Cong., 1st Sess. 77 (1983).

[5]See *NAACP* v. *Medical Center, Inc.*, 599 F.2d 1247, 1248 n.4 (3d Cir. 1979), aff'g in relevant part 453 F. Supp. 280 (D. Del. 1978); *United States* v. *University Hospital*, 575 F. Supp. 607, 612-613 (E.D.N.Y. 1983), aff'd on other grounds, 729 F.2d 144 (2d Cir. 1984); *United States* v. *Cabrini Medical Center*, 497 F. Supp. 95, 96 n.1 (S.D.N.Y. 1980), rev'd on other grounds, 639 F.2d 908 (2d Cir. 1981); *Cook* v. *Ochsner Foundation Hospital*, No. 70-1969 (E.D. La. Feb. 12, 1979); *Bob Jones University* v. *Johnson*, 396 F. Supp. 597, 603 n.21 (D.S.C. 1974), aff'd mem., 529 F.2d 514 (4th Cir. 1975); see also *Bernard B.* v. *Blue Cross & Blue Shield*, 528 F. Supp. 125, 132 (S.D.N.Y. 1981), aff'd on opinion below, 679 F.2d 7 (2d Cir. 1982); *Flora* v. *Moore*, 461 F. Supp. 1104, 1115 (N.D. Miss. 1978). But see *Trageser* v. *Libbie Rehabilitation Center, Inc.*, 462 F. Supp. 424 (E.D. Va. 1977), aff'd on other grounds, 590 F.2d 87 (4th Cir. 1978), cert. denied, 442 U.S. 947 (1979).

Amendments of 1972, 20 U.S.C. 1681(a), which prohibits discrimination based on sex in programs receiving federal assistance (Pet. App. A13-A14). The court of appeals relied on *Grove City College* to reject petitioner's analogy to general assistance programs such as social security and its argument that Section 504 does not apply because Medicare and Medicaid are received by the hospitals indirectly through patients (Pet. App. A15-A16). Finally, the court relied on the longstanding, consistent administrative interpretation (contained, in the regulations implementing Title VI and Section 504) of the statutes, which concludes that Medicare and Medicaid do constitute federal financial assistance to hospitals and health care agencies participating in those programs (Pet. App. A14-A15).[6]

ARGUMENT

Petitioner asserts that this Court should review the judgment below because the decision raises "three distinct questions of national importance never before decided by this Court or any other Court of Appeals" (Pet. 8). Two of those questions, however, were answered by the Court in *Grove City College* v. *Bell*, No. 82-792 (Feb. 28, 1984), and the third, which was correctly decided by the courts below, does not merit this Court's review. The decision below is consistent with *Grove City College* and does not conflict with any other decision of this Court or the other courts of appeals. Further review is unwarranted.

1. Petitioner argues first (Pet. 8-9) that the Medicare and Medicaid payments it receives do not constitute federal financial assistance because they are merely payments for

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[6]The court also rejected petitioner's argument that Medicare and Medicaid fall within an implied exemption in Section 504 for contracts of insurance (Pet. App. A16-A19), and concluded that the district court correctly identified petitioner's inpatient and emergency room services as the specific programs receiving federal financial assistance (*id.* at A19-A21).

services rendered as part of a commercial transaction. The Court in *Grove City College*, however, recognized (slip op. 17) that the grants at issue there "increase[d] both an institution's resources and its obligations." The financial aid grants were designed, the Court stressed (*id.* at 16), "not merely to increase the total resources available to educational institutions, but to enable them to offer their services to students who had previously been unable to afford higher education." It is therefore clear that the fact that obligations may run with the acceptance of federal aid does not in itself prevent that aid from being regarded as "federal financial assistance."

Nearly all federal grants, loans and other forms of payment covered by nondiscrimination statutes such as Section 504 are intended to enable the recipient to provide services to satisfy an unmet need recognized by Congress. For example, Congress referred, in the floor debates on Title VI, to a list of programs that would be affected by the statute, which included those designed to support and provide educational services, health care and low-cost housing for the poor. 110 Cong. Rec. 13381-13382 (1964). The fact that the United States expects certain services in exchange for its payment of federal dollars does not alter the status of those funds for purposes of coverage under Section 504 or Titles VI or IX.

2. Petitioner argues next (Pet. 9-10) that Medicare and Medicaid are direct benefit programs to which Section 504 and the other nondiscrimination statutes do not apply. The fact that Medicare and Medicaid payments benefit individual patients, however, does not free petitioner from its statutory obligation not to discriminate. In *Grove City College*, the Court rejected a similar argument with respect to the Basic Educational Opportunity Grants (BEOGs) at issue there. As in *Grove City College* (slip op. 9 n.13), petitioner's analogy to Social Security and other "general-purpose governmental assistance to low-income families is

unavailing." As is true with respect to BEOGs (*ibid.*) — but unlike general-purpose cash payments —there is clear evidence of congressional intent that receipt of Medicare and Medicaid will trigger coverage under the nondiscrimination statutes (see pages 8-9, *infra*); institutions have control over and knowledge of whether they receive federal funds; and an individual's eligibility for benefits is contingent on his receipt of services from a participating institution.[7] Here, as with the BEOG program, a hospital must meet certain conditions in order to participate in Medicare and Medicaid, and payment of the funds is tied to the provision by the hospital of services covered by the program. Petitioner's attempt to distinguish this case from *Grove City College* must fail.[8]

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[7]Petitioner misreads (Pet. 10 n.4) *Grove City College* to impose a requirement that federal financial assistance be intended by Congress to benefit the institution through which services are provided to the ultimate individual beneficiaries in order for the nondiscrimination statutes to apply. The Court did not, however, consider this factor alone in concluding that BEOGs constitute federal financial assistance (slip op. 6-13 & n.13). To the contrary, the Court relied most heavily on the legislative history demonstrating a congressional intent that the funds in issue would trigger Title IX coverage. Similar legislative history exists with respect to Medicare and Medicaid, as the court of appeals recognized (Pet. App. A7-A12; see also pages 8-9, *infra*). The Court did rely on the congressional intent to benefit financial aid programs in determining that those programs — rather than entire universities —were the relevant "program or activity" under Title IX (slip op. 14-17). Here, by contrast, there is no evidence of congressional intent to cover only some portion of petitioner's activities narrower than its inpatient and emergency room services, identified by both courts below as the appropriate programs (see note 9, *infra*). In any event, Congress recognized that Medicare and Medicaid would benefit participating hospitals as well as their patients. See S. Rep. 404, 89th Cong., 1st Sess. 36-37 (1965).

[8]Petitioner also argues (Pet. 13-16) that the identification of the covered programs as its inpatient and emergency room services is not sufficiently specific under *Grove City College*. (Although petitioner also cites *Consolidated Rail Corp.* v. *Darrone*, No. 82-862 (Feb. 28, 1984), and *North Haven Board of Education* v. *Bell*, 456 U.S. 512

3. Finally, petitioner argues (Pet. 10-12) that Medicare and Medicaid are exempt from coverage under Section 504 because they are "contracts of insurance" that are explicitly exempt under Title VI (42 U.S.C. 2000d-4).[9] The court of appeals correctly interpreted the legislative history of Title VI in resolving this question. The exclusion of "contracts of insurance or guaranty" was intended simply to prevent Title VI from reaching individual bank accounts at federally insured banks and individually owned homes financed with federally guaranteed mortgages. See 110 Cong. Rec. 2500 (1964) (remarks of Rep. Celler); *id.* at 6545 (remarks of Sen. Humphrey); *id.* at 6566 (analysis of House version); *id.* at 9090 (remarks of Sen. Gore); *id.* at 12878 (remarks of Sen. Stennis); *id.* at 13378 (remarks of Sen. Humphrey). The debates indicate that Congress did not at that time want to enact a federal fair housing act by covering federally guaranteed mortgages under Title VI; hence the exclusion. In contrast, the legislative history of both Title VI and Medicare and Medicaid demonstrates that Congress did intend

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(1982), in this regard, neither case contains a discussion of the meaning of "program or activity" as that phrase is used in the statutes.) This argument is without merit. As the court of appeals noted (Pet. App. A20), Medicare was designed to ensure that eligible beneficiaries would receive inpatient and emergency services. See 42 U.S.C. 1395c, 1395d, 1395f(d)(1). Petitioner's own accounting records, moreover, reflect the fact that its inpatient and emergency room services receive Medicare funding (Pet. App. A20-A21). Significantly, petitioner does not identify any more specific program that it operates that might properly be considered the covered program under Section 504. Finally, unlike in *Grove City College*, there is no evidence of congressional intent to support a result here more narrow than that reached by the courts below.

[9]HHS has interpreted Section 504 to include the same exemption. 45 C.F.R. 84.3(h); *id.* Pt. 84 App. A, Subpt. A ("[t]here is no indication * * * that Congress intended section 504 to have a broader application, in terms of federal financial assistance, than other civil rights statutes"). Compare *Consolidated Rail Corp.* v. *Darrone, supra.*

to cover such health care assistance under the nondiscrimination statutes. For example, in the debates on Medicare and Medicaid in 1965, several senators who were prominently involved both with that legislation and with Title VI stated that health care providers would be required to "abide by Title VI." 111 Cong. Rec. 15803 (1965) (remarks of Sen. Ribicoff); see also *id.* at 15813 (remarks of Senators Hart and Pastore). These statements by legislators closely involved in the presentation and passage of particular legislation are "an authoritative guide to the statute's construction,"[10] especially where, as here, no Senators raised opposing views. There is no support for petitioner's reading of the exclusion, which would exempt what Congress so clearly intended to include.[11]

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[10]*North Haven Board of Education* v. *Bell*, 456 U.S. at 527; *Grove City College*, slip op. 10-11.

[11]Further support for the court of appeals' decision is provided by *Flemming* v. *Nestor*, 363 U.S. 603 (1960), in which this Court characterized Social Security, which is funded in the same manner as Medicare Part A, as "a form of social insurance" that did not give rise to a contractual right on the part of individuals (*id.* at 610). Here as well, while Medicare and Medicaid might be classified for some purposes as a type of insurance, they do not constitute "contracts of insurance" excluded under Title VI.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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